Exhibit A

Order Granting Plan Administrator's Five Hundred Nineteenth Omnibus Objection to Claims (No Liability Claims)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**Case No. 08-13555 (SCC)**
Debtors.	:	**(Jointly Administered)**

ORDER GRANTING
PLAN ADMINISTRATOR'S FIVE HUNDRED NINETEENTH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY CLAIMS)

Upon consideration of The Plan Administrator's Five Hundred Nineteenth Omnibus Objection To Claims (No Liability Claims) with respect to claims filed by Maverick Long Enhanced Fund, Ltd., Maverick Neutral Levered Fund, Ltd., Maverick Neutral Fund, Ltd., Maverick Fund USA, Ltd., Maverick Fund II, Ltd. and Maverick Fund, L.D.C. (collectively, the "Claimants"), dated June 22, 2016 [Docket No. 53107] (the "Objection"),[1] of Lehman Brothers Holdings Inc., as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the "Plan"), pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking to disallow and expunge the Maverick Claims, all as more fully described in the Objection; and it appearing that this Court has jurisdiction to hear and consider the Objection; and notice of the Objection having been provided to Claimants, and it appearing that no other or further notice need be provided; and the Court having carefully considered the Objection, the Opposition Of The Maverick Entities To The Plan Administrator's Five Hundred Nineteenth Omnibus Objection To Claims (No Liability Claims) [Docket No. 53435], and the Reply To Response To, And In Further

[1] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Objection.

Support Of, Plan Administrator's Five Hundred Nineteenth Omnibus Objection To Claims [Docket No. 55046]; and the Court having heard the arguments of counsel at the Sufficiency Hearing held on March 24, 2017; and the Court having found and determined that the relief sought in the Objection is in the best interests of the Chapter 11 Estates, their creditors, and all parties in interest, and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing thereof for the reasons stated in the Court's oral opinion included in the transcript attached as Exhibit A hereto, which is incorporated herein and made part hereof, it is hereby ordered that:

1. Pursuant to section 502(b) of the Bankruptcy Code and Rule 3007(d) of the Bankruptcy Rules, the Maverick Claims are hereby disallowed and expunged in their entirety with prejudice.

2. The Court's oral opinion is hereby supplemented as follows: The Claimants submit that the Maverick Claims adequately assert claims against LBHI for (i) direct liability under the prime brokerage agreements (the "PB Claim"); (ii) liability for breaches of the New York Uniform Commercial Code (the "UCC Claim"); and (iii) liability for unspecified damages for lost investment opportunities and other items (the "Lost Opportunity Claim", and collectively with the PB Claim and the UCC Claim, the "Additional Claims"). To the extent that the Court disagrees with the Claimants' assertion that the Maverick Claims can be characterized as direct claims, the Claimants seek an opportunity to move to amend the Maverick Claims to assert the Additional Claims.

The Claimants are not entitled at this late date to amend their guarantee claims to assert direct claims. *See Midland Cogeneration Venture v. Enron Corp. (In re Enron Corp.),* 419 F.3d 115 (2d Cir. 2005) ("Enron I")*; see also In re Enron Creditors Recovery Corp.*, 370 B.R. 90

(Bankr. S.D.N.Y. 2007). As outlined by the Second Circuit in *Enron I*, courts typically engage in a two-step inquiry when considering a claimant's request for leave to amend its claim: first, the court examines whether the amendment "relates back" to the original claim (*i.e.*, if it corrects a defect of form in the original claim, describes the original claim with greater particularity, or pleads a new theory of recovery on the facts set forth in the original claim); and second, "if an amendment does, in fact, 'relate back' to the timely filed claim, [the] court[] will 'examine each fact within the case and determine whether it would be equitable to allow the amendment.'" *Enron I*, 419 F.3d at 133 (citations omitted). "Multiple factors play a role in this analysis, including whether the debtor, or other creditors, would be unduly prejudiced by the amendment . . . whether the late claimant acted in good faith and the delay was justified [and] . . . whether the opposing party will be unduly prejudiced by the amendment." *Id*. (internal quotations and citations omitted).

The Additional Claims constitute new claims seeking to assert direct liability (rather than guarantor liability) against LBHI; accordingly, leave to amend the Maverick Claims to assert such Additional Claims is denied for failure to satisfy the first step of the *Enron I* inquiry. Even assuming, *arguendo*, that the Additional Claims are not new claims but do in fact "relate back" to the original guarantee claims such that the first step of the inquiry for leave to amend would be satisfied, any amendments to the Claimants' proofs of claim would inequitably and unduly prejudice the estate of LBHI; accordingly, leave to amend is denied based on the failure to satisfy the second step of the *Enron I* inquiry. While the Second Circuit in *Enron I* stated that there is no bright-line rule governing lateness and that lateness must be considered in the context of the proceedings as a whole, *id*. at 128, the Claimants have requested leave to amend their proofs of claim more than *seven years* after the bar date, *five years* after the effective date of the

Plan, and after numerous distributions have been made to creditors; such request cannot be considered timely. Further, the Claimants do not provide any cogent justification for their delay in requesting leave to amend but instead observe that the parties have been discussing the Additional Claims for quite some time, so these claims should not be a surprise to LBHI. As in *Enron I*, the Claimants' argument that LBHI "should have known" about the Additional Claims "undermine[s] the process of distinguishing between asserted and unasserted claims by requiring creditors to submit proofs of claim in order to participate in the bankruptcy reorganization." *Id*. at 131. LBHI could not and should not have been expected to reserve funds for the Additional Claims. Lastly, the Claimants' claims are not unique; LBHI guaranteed numerous contracts of its many affiliated entities. As in *Enron I*, if the Court were to permit holders of LBHI guarantees to amend their claims at this juncture in the case, it would "open the 'floodgates' to similar late[-filed] claims" which would cause undue prejudice to LBHI and result in a significant adverse impact to the estate and its creditors. *Id*. at 121. For these reasons, the Claimants are not entitled to amend their proofs of claim to assert the Additional Claims.

Moreover, even if the Court were to permit the Claimants to amend their proofs of claim to assert the Additional Claims, such amendment would be futile as the Additional Claims fail on the merits for the following reasons. First, with respect to the PB Claim, the Claimants argue that LBHI is directly liable under the PB Agreements because LBI signed the PB Agreements on behalf of itself and all of its affiliates, including LBHI. This contention is unfounded because LBHI, by its nature, could not have been directly responsible for the obligations under the PB Agreements. LBHI was merely a holding company; it was not permitted to hold securities or cash on behalf of customers, execute trades, or otherwise undertake any brokerage-type

obligations. Since LBHI could not perform the functions of a broker-dealer, LBHI cannot be directly liable under the PB Agreements.

Second, with respect to the UCC Claim, the Claimants maintain that LBHI is liable for breaches of statutory obligations under Sections 8-503, 8-506, and 8-508 of the UCC; however, the UCC is not applicable to the Maverick Claims. The plain language of the UCC states that the substance of the duties imposed by the aforementioned sections should be governed by applicable insolvency law. *See* N.Y. U.C.C. § 8-503, cmt 1 (stating that "[i]f the [securities] intermediary fails and its affairs are being administered in an insolvency proceeding, the applicable insolvency law governs how the various parties having claims against the firm are treated"); *see also*, N.Y. U.C.C. § 8-509(a) (stating that "[i]f the substance of a duty imposed upon a securities intermediary by Sections 8-504 through 8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty"). The Claimants do not dispute LBHI's compliance with the Bankruptcy Code or the purportedly applicable United Kingdom Insolvency Act 1986. Because LBHI's compliance with applicable insolvency law satisfies the duties imposed under Sections 8-503, 8-506, and 8-508 of the UCC, the UCC Claim would fail as a matter of law.

Lastly, the Lost Opportunity Claim is entirely too speculative and implausible to sustain a cause of action. To establish a claim for loss of future profits as damages for a breach of contract, "the alleged loss must be capable of proof with reasonable certainty. In other words, the damages may not be merely speculative, possible or imaginary, but must be reasonably certain and directly traceable to the breach, not remote or the result of other intervening causes." *Kenford Co. v. Country of Erie*, 67 N.Y.2d 257, 261 (1986) (citations omitted). Any potential lost profits claimed by the Claimants appear to be based on purely hypothetical investments that

Claimants *could have* made; such hypothetical investments would not be sufficient to prove loss. As such, Claimants would be unable to state a valid cause of action with respect to the Lost Opportunity Claim.

Accordingly, for all of the foregoing reasons, Claimants' request for leave to amend their proofs of claim is denied.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

4. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a)(1) with respect to the Maverick Claims.

Dated: May 12, 2017
New York, New York

/S/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

CASE NO. 08-13555-scc

- x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC.,

Debtor.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

March 24, 2017

10:03 AM

B E F O R E :

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

ECRO - KAREN

HEARING RE: Doc #53107 Plan Administrators Five Hundred Nineteenth Omnibus Objection to Claims (No Liability Claims)

Transcribed by: Sheila Orms and Dawn South

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P R O C E E D I N G S

THE COURT: Please have a seat.

How is everyone?

ALL: Very good, Your Honor.

THE COURT: Okay. Who am I going to hear from?

MR. LEVINE: Thank you, Your Honor, Richard Levine from Weil Gotshal for LBHI as plan administrator.

THE COURT: Okay.

MR. LEVINE: Your Honor --

THE COURT: You know, I'll say my usual, I've read the papers, but in light of the degree of complexity for the -- although you say it's not complex, but in light of the sheer volume of the different arguments, I'm happy to let you make whatever presentation you like and the same goes for the Maverick parties.

MR. LEVINE: Thank you, Your Honor.

So, as you know, we believe that if we are right about the application of Section 562, then our motion should be granted in its entirety so that will be my focus. But I'd like to start, Your Honor, with the Maverick LBIE settlement.

The first thing I'd like to read from is --

THE COURT: Can I ask you one --

MR. LEVINE: Sure.

THE COURT: -- overarching background question.

MR. LEVINE: Sure.

THE COURT: So this all came in the first round incident to the estimation motion.

MR. LEVINE: That's right.

THE COURT: Okay. So in terms of, you know, given that we're at an advanced point in the case, and this is not dispositive in any way, it's just information for me, are there other similar claims structurally similar claims that have been allowed or disallowed either with respect to an LBHI guarantee of a LBIE obligation or LBIE obligation or an LBHI guarantee of an LBI obligation? And if you don't know the answer that's fine, as a legal matter it's neither here nor there, it's just information.

MR. LEVINE: I'll defer to Mr. Fail on that. But it's my understanding that no, that there were two of these "LBIE" guarantee claims, SRM, which we argued to Your Honor last summer and then mediated and then this one, where there were among the few LBIE guaranteed claims that were withdrawn from the estimation objection.

Most of the LBIE guarantee claims were resolved

with the estimation objection and you estimated at zero because LBIE was being a hundred percent payor. There were only a handful --

THE COURT: Payor, you said, payor.

MR. LEVINE: Right, so LBIE was paying a hundred percent on claims. So it was only a few guarantee claims against LBHI that had settled with LBIE before they knew that LBIE was going to be a hundred percent payor who objected to the estimation motion.

The estimation motion was withdrawn as to those claims because we wanted to get rid of the vast majority where there was no objection, so there was only a handful that survived.

And as far as I know, the only ones still outstanding are SRM and Maverick. SRM is a little bit more complicated because it's governed by UK law, remember we don't think that makes a difference --

THE COURT: I remember, right.

MR. LEVINE: -- but it does, it did require both sides to put in those horrible English expert law declarations --

THE COURT: I wouldn't agree with the characterization as horrible, but.

MR. LEVINE: Well, they're not written in American

English for sure.

THE COURT: No comment.

MR. LEVINE: Garrett, do you want to add anything to add?

MR. FAIL: Yeah, thank you, Your Honor, Garrett Fail.

THE COURT: Yes, Mr. Fail.

MR. FAIL: Your Honor, is correct, there are a number of claims that are still outstanding on -- of LBIE guarantees, guarantees by LBHI of LBIE primary obligations that are subject to a motion to estimate claims. There's essentially two parties that are still outstanding with those, there's a number of claims that they have acquired, but there's only two parties there.

These -- the two that Mr. Levine referenced SRM and Maverick are the only two in the claims objection where LBHI filed an objection because the parties are asking for more than they -- they're looking for no more than --

THE COURT: The notion on that are the primary obligation at Libby.

MR. FAIL: Exactly. And I'm not aware of any claims against LBHI where the primary obligation was LBIE that have been allowed by LBHI.

THE COURT: Okay. All right. Thank you.

MR. LEVINE: So what I was going to -- since our focus is on 562 --

THE COURT: Right.

MR. LEVINE: -- and I'll get to the legal issues there in a few minutes. I thought what I'd like to do is start with the key elements, which we think allow us to win if 562 applies.

The first is a statement in Maverick's objection to the estimation motion which I don't think, you know, by any means they're walking away from. Your Honor doesn't need to read along with me, but if you want to --

THE COURT: I have it. I have tab 4.

MR. LEVINE: Tab 4.

THE COURT: Tab 4, yes.

MR. LEVINE: Page 11, paragraph 22, and I'm reading the second half of the paragraph about five lines up from the bottom.

And this is their statement, and again I don't think it's --

THE COURT: Hold on, tab 4 -- sorry.

MR. LEVINE: No problem, tab 4, page 11.

THE COURT: Page 11, yes.

MR. LEVINE: Paragraph 22.

THE COURT: The Ivanhoe rule.

MR. LEVINE: On paragraph 23, sorry, next paragraph, I can't read my numbers. So if you go about halfway or three quarters of the way down that paragraph, the last sentence begins towards the right-hand column "in light of the cancellation."

THE COURT: Yes.

MR. LEVINE: So this is their statement "In light of the cancellation of indebtedness that would otherwise have been owed to LBIE, Maverick concedes that it already has effectively received approximately 101.9 million in value from LBIE, in connection with the LBIE settlement agreement, reflecting an offset of the approximate value of the securities and cash that LBIE may have been obligated to return to Maverick under English law."

So that's our first kind of point, which is that if we're right, that the settlement date, and it wasn't exactly the settlement date but for purpose of the estimation motion, we're using the date and the valuation that they assert, they got the value of their cash and securities as of the settlement date under the settlement.

So that's a valuation date, they got what they're entitled to. As we understand their argument, they say, no, you use the petition date.

THE COURT: They say you use the petition date --

MR. LEVINE: Right.

THE COURT: -- for the purpose of the guarantee.

MR. LEVINE: Of valuing, right, of valuing the claim.

THE COURT: For the purpose of asserting a claim on the guarantee.

MR. LEVINE: That's right. Then the second thing that I wanted to bring out is actually in the settlement agreement itself, so that is behind tab 4, now we're going to tab E behind tab 4, which is the LBIE settlement -- settlement between LBIE and Maverick.

THE COURT: Yes.

MR. LEVINE: And there I'd like you to turn to page 4 --

THE COURT: Okay.

MR. LEVINE: -- of the settlement. And it's actually part of -- it's 2.1.A, and this is where it provides for termination—of the relevant agreements and they're actually in Schedule 2 to the settlement, and they list all the agreements at issue, the prime brokerage agreements, the marginal lending agreements, and the global master securities lending agreements, so they're all listed in Schedule 2 and then defined as the relevant agreements.

"The relevant agreements and all transactions

thereunder, to the extent that they have not previously been terminated are terminated as between LBIE and each Maverick entity."

And I will tell Your Honor that we saw in discovery any documents suggesting an earlier termination, and SRM you'll remember, they actually served the notice of termination, but Maverick was like most LBIE claimants, they didn't serve a notice of termination, so there was no prior termination.

And I don't understand them to be arguing there was a prior termination.

THE COURT: No, I think in this point their argument is that essentially it doesn't matter because the words say that they're terminated as between LBIE and each Maverick entity and therefore that does not affect the obligations of LBHI and therefore, it does not implicate or mean that 562(a) is controlling.

MR. LEVINE: Right and --

THE COURT: And in response to this, you say, well, look all the obligations --

MR. LEVINE: I can sit down.

THE COURT: All the obligations are terminated, so the fact that these words limit it to LBIE, is neither here nor there.

MR. LEVINE: Right. I mean, that's exactly right, it's really those three arguments you were just hinting at that LBHI was not a broker dealer. LBHI could not perform the prime brokerage functions, in fact, in the prime brokerage agreement it expressly provides that a prime brokerage account, the opening words are "a prime brokerage account opened pursuant to this agreement will be opened at Lehman Brothers, Inc."

And so clearly Lehman Brothers, Inc. was the prime broker that, in fact, it was LBIE but it had to be either LBI or LBIE --

THE COURT: Sure.

MR. LEVINE: -- because LBHI was not a broker or could not trade for customers, could not custody --

THE COURT: Could not custody --

MR. LEVINE: -- securities or cash. So that in terms of the obligations on the Lehman side on the -- under the prime brokerage agreements, it was terminated as to LBIE, there was nothing left for LBHI to do. LBHI was technically a party and benefitted from things like exculpation provisions, but it didn't have any obligations because it couldn't interact with customers.

Secondly obviously to the extent that their claims are guarantee claims, and under the proof of claim, and

we'll look at that in a moment, I'm not sure you're going to pull one out, all the claims are guarantee claims.

THE COURT: They're guarantee claims.

MR. LEVINE: So if they're guarantee claims --

THE COURT: Right.

MR. LEVINE: -- and the primary claims are against LBIE and it's been terminated as to LBIE, and the only question is whether LBIE still owes them something as to which we're guarantor. Well, I don't think it matters whether it was terminated as to LBHI when, to the extent their claims are a guarantee claim.

And I think finally the argument would be that if, in fact, it was not terminated as to LBHI, so that there were still somehow remaining obligations of LBHI after the LBIE/Maverick settlement, then it was an executory contract and it was rejected pursuant to the plan, and that was just about the same date as the settlement, the effective date of the plan, so it was rejected and 562 would still apply.

So that's our response to the argument that it wasn't terminated as to LBHI. So if we are right that Section 562 controls, then we think there's no room to argument, no room to argue, other than as of that date, the contracts were terminated, the security contracts, the master netting agreements were terminated and they got full

value.

Now, as I understand Maverick's main theory, it's very different. The main theory is that the value of their long positions, and they say you don't take into account the short positions, the offsetting short positions, you just look at their long positions, to decrease from the petition date which is they say when you value it, 562 doesn't apply, to the settlement date by 16.2 million. And that they're entitled to that diminution in value from petition date to settlement date because all they were able to get from LBIE is the value at the settlement date, and not the value at the petition date.

Of course, we think well, it doesn't matter what the value is of the petition date, but that's their argument as I understand it.

THE COURT: Well, in support of that argument, they say, for example, if for some reason, their claim against LBHI would have had to have been valued prior to the settlement date, you would be stuck with valuation as of the petition date.

MR. LEVINE: Well, I -- that may have been true, but the -- once they terminated their contracts, 562 kicks in. I mean, 562 --

THE COURT: 562 kicks in not only with respect to

the termination of the prime brokerage agreement, but also with respect to the guarantee agreement.

MR. LEVINE: Right, for multiple reasons. Number one, we think the guarantee agreement under the definition in the Code, in Section 741 --

THE COURT: Is the securities --

MR. LEVINE: -- is the securities contract, right, and to the extent the prime brokerage agreement is the master netting agreement, then the guarantee of the master netting agreement is also a securities contract.

The -- I lost my train of thought, I'm sorry.

THE COURT: I'm sorry, my fault.

MR. LEVINE: So, you know, we think 562 applies, but so to get these diminution damages, reduction in value, and we're accepting their numbers for purposes of the motion to dismiss hearing, we're not agreeing with them, we're just accepting them for purposes of -- for example, they value -- their settlement they value is supposedly as of February 13th, 2012. Because that's, according to their affidavit, basically when the business deal was done.

Now, my guess is, is that the reason they're using that day, so the actual settlement date of March 30th, 2012 is because it moved against them, but I don't know that, and we're not challenging that --

THE COURT: We're not going there at a sufficiency hearing.

MR. LEVINE: At a sufficiency hearing.

THE COURT: Right.

MR. LEVINE: We're accepting their number. So -- but to get those diminution damages, that 16.2 million, they need to establish 562 doesn't apply, they need to convince Your Honor that your rulings in Stonehill, Newport, and Providence and the decision in MF Global on exculpation provisions precluding diminution damages doesn't apply here; they're wrong.

THE COURT: And just to stop in the decision tree, even if 562 were held not to apply, you say the exculpation would kick in and would knock out the liability of LBHI on the guarantee nonetheless, correct?

MR. LEVINE: On the diminution damages.

THE COURT: On the diminution damages.

MR. LEVINE: They make an assertion that as of the petition date for five of the six funds, you know, five funds they chose, so we know what the sixth one would have done to the number, the net amount, and this is on a net basis owed by LBIE to Maverick was 4.3, 4.3 million.

So we would say that, if they're right that 562 doesn't apply, our worst case is a 4.3 million --

THE COURT: Yes.

MR. LEVINE: -- then we'd say, once we take into account that sixth fund, it's likely -- well, we know it's going to be less than 4.3, whether it's going to be any positive amount, I mean, I actually know the number, but it was provided in mediation so I can't say it unless counsel agrees, but in the public record, we know that for five of the six funds all that LBIE owed Maverick as of the petition date was 4.3 million on a net basis.

And as you know, Your Honor, we think this notion that our guarantee was only of long positions and not net, makes no sense. I mean, the function of a guarantee obviously is to make sure that the primary obligor makes the claimant whole. Right.

If all LBIE owed to Maverick was 4.3 million because Maverick owed LBIE this much and LBIE owed it that much, it seems crazy to say that we have to pay them this windfall that we don't get to take into -- well, we're guaranteeing more than the net amount, that they get to claim and get this windfall.

So we think that doesn't make sense. So we think that to get the 16.2 diminution damages, two of the three arguments are that 562 doesn't apply, we think they lose. The exculpation provisions don't preclude the diminution

damages, and we think they lose the law of the case, and MF Global. And then there's this issue of they only look at their long positions, and I think that's contrary to the nature of a guarantee. We think that's contrary to the nature of the parties' agreements.

Now, we made a mistake in our opening brief, we cited to Your Honor the netting provision in the prime brokerage agreement, which provides for netting. And they correctly pointed out in their opposition that that only applied if Maverick was in default.

But there's, you know, sometimes it's lucky to be on the side of a good contract. Paragraph 32 of the prime brokerage agreement, Your Honor --

THE COURT: What tab am I in?

MR. LEVINE: Okay. You are in tab 4B. Your Honor, I actually have some excerpts printed out, would you --

THE COURT: I can -- it's easier for me to just use my little tabs here. So I'm with you.

MR. LEVINE: 4B, and if you go to the end of the prime brokerage agreement --

THE COURT: So this is --

MR. LEVINE: 4B.

THE COURT: -- LBI, prime brokerage agreement.

MR. LEVINE: Right, the only prime brokerage

agreement is with LBI.

THE COURT: Well, it says LBI.

MR. LEVINE: Yeah, it's with LBI, but this is the one that governed the relationship, there was no separate one with LBIE.

THE COURT: Okay. You folks agree with that?

MR. BELL: Correct, we do, Your Honor.

THE COURT: Okay. So I'm in tab 4B, and what page?

MR. LEVINE: And if you go to paragraph 32, so we're towards the end.

THE COURT: Numbered paragraph 32.

MR. LEVINE: On page 9.

THE COURT: Yes, cumulative rights entire agreement.

MR. LEVINE: Right. If you go to the second sentence, it's about four lines down, towards the right-hand margin, "to the extent that the provisions of any contracts you have with any Lehman Brothers entity, whether heretofore or hereafter entered into are inconsistent whether the inconsistency be within the contracts or a single contract, the conflict shall be resolved in favor of the provision which affords Lehman Brothers with the maximum rights, remedies, benefits or protections."

So to the extent that the provisions of a contract, a prior contract heretofore entered into are inconsistent with this, Lehman gets the best provision.

THE COURT: Okay. And how does that help with respect to the netting provision?

MR. LEVINE: Because if you go to our tab 3, which is our reply brief, attached to our reply brief was the prior prime brokerage agreement, it's Exhibit 1, in terms of the ECF filings, page 27 of 80. Lehman Brothers International Europe LBIE Master Prime Brokerage Agreement. At tab 3, page 27 of 80.

THE COURT: Yes.

MR. LEVINE: Okay. So if we go to page -- well, I'm sure there's a page number, it's page 42 of 80, I'm looking at Section 12, termination.

THE COURT: Yes.

MR. LEVINE: "Events of default," of course we have to figure out what an event of default is, "the occurrence of the following events with respect to a party constitutes an event of default in relation to that party," the defaulting party, the other party being the non-defaulting party.

And then we turn to the next page, 12.1D provides "an active insolvency occurs with respect to the party,

except in the case of an active insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the defaulting party, in which case, no such notice will be required, the non-defaulting party serves the default notice."

Well, from our perspective it's clear that LBIE's appointment of an administrator was covered by D, no notice was required, so there was an event of default, it makes sense LBIE filed, sought administration was an event of default.

You go to the next section, Section 13, close-out "on the occurrence of an event of default the following shall immediately occur," Part C provides that the non-defaulting party, Maverick, had to calculate the amounts, and then Section D on page 44 of 80 makes clear that there's automatic net.

THE COURT: Okay.

MR. LEVINE: So that under the prime brokerage agreement in effect, there was a provision which said prior agreements that are better for Lehman control, this prior agreement makes clear that there's automatic netting in the event of an event of default.

So we think that makes clear that they're netting

that.

THE COURT: So just to encapsulate that, you're saying that notwithstanding that they were right with respect to, I'll call it the LBI PB agreement that under the LBI PB agreement, you have to revert to this constellation of provisions in the previous PB agreement, which was, in fact, with LBIE, and that gave you the advantage of netting notwithstanding the fact that your status as a non-defaulting party.

MR. LEVINE: Right, correct. And, you know, frankly I think that's kind of standard and it's kind of surprising to me that the LBI prime brokerage agreement didn't provide for automatic netting. I think this is kind of typical, you know, if things end, you figure out who owes what to what, whom to whom, and you net.

So that we think that's very important. And maybe it's time to look at the proofs of claim.

THE COURT: Okay. That's tab 5.

MR. LEVINE: That's tab 5. As far as I know, they're all the same except for which Maverick fund it is, the amount claimed, and which guarantee they rely on.

So the language we're going to look at as far as I know, and I checked very carefully is the same -- each of the six proofs of claim. The difference on the guarantees

are three of them rely on the corporate resolution, and three of them rely on the 2002 direct guarantee by LBHI.

Now, in fact, that 2002 direct guarantee was replaced by a later guarantee, there was a direct guarantee and the one that we think governs here even though it's not mentioned in the proofs of claim, is a direct guarantee, we're not contesting the application of that direct guarantee, we clearly don't accept the fact that the corporation resolution is enforceable, we don't accept the fact that the S&P letter is enforceable, but we think none of that matters for today because there's a direct guarantee which we acknowledge is enforceable.

So anyway, so I'm just looking at the very first one behind tab 5 which is the one from Maverick Long Enhanced Fund Limited. And of course, on the first page, on the form page, they check this box if all or part of your claim is based on the guarantee. And then if we actually look at the text, paragraph 1 just recites the filing. The second paragraph 1 provides "this proof of claim is filed in debtor's bankruptcy case by Maverick Long Enhanced Fund Limited. Maverick has a claim, the claim against the debtor on account of the debtor's full guarantee pursuant," and they refer to the corporate resolution, "of the payment of all liabilities, obligations and commitments of LBIE."

So clearly that paragraph is only talking about the guarantee. If we go to paragraph 2, again recites the three agreements, the prime brokerage agreement, the marginal lending agreement, and the global master securities lending agreement, and then at the very bottom, the last three words on that page it continues, "The Lehman entities agree to provide certain prime brokerage services to Maverick," and then it defines the different agreements as the prime brokerage documents, and that's important, prime brokerage documents, "under the terms of the prime brokerage documents, LBIE has a lien and first priority security interest in certain assets held or controlled by LBIE."

Okay. Well, that certainly sounds like a right to net, if you have a lien and first priority security interest on the assets. And it continues in that same vein, "Such assets are held as collateral by LBIE as agent and bailee on behalf of itself and all other affiliates of LBIE, in connection with Maverick's obligations under the prime brokerage documents."

Again it sounds like they're admitting that we get to net. Then importantly, the last sentence of paragraph 2 reads, "As of the petition date, the Lehman entities had custody of Maverick's assets pursuant to the prime brokerage documents in the amount of 1.286 million," that aggregates

across the six claims to 187 million.

"This proof of claim constitutes a demand for payment under the guarantee." Then, when describing the claim in paragraph 3, "Maverick hereby asserts the claim in the initial amount of that 1.3 million less any amounts owed by Maverick in connection with the prime brokerage documents."

Okay. Now, in their opposition, Maverick argues well, that's not netting, well, you know, sounds to me like netting. And they drop a footnote, which also sounds like netting.

THE COURT: Footnote 3.

MR. LEVINE: Footnote 3. "For the avoidance of doubt, the initial claim amount is a gross claim and does not take into account any amounts or obligations that Maverick may owe to the Lehman entities under the terms of the prime brokerage documents."

THE COURT: Well, that is a -- that language is to protect them from an accusation that they overstated the claim.

MR. LEVINE: Right, right, but it's certainly consistent --

THE COURT: No, I understand.

MR. LEVINE: -- to their understanding that they

only got a net claim.

THE COURT: Right.

MR. LEVINE: Then they say, "the initial claim amount may change depending on the current value of the assets in custody until such time as Maverick exercises any remedies it may have to liquidate the claim." Well, it's claim.

Now, we don't agree with that, we think that either it's the petition date under 502 or the termination or rejection date under 562, but that was their claim, that's fine.

Then we go with the additional claims, because now remember they're asserting they have direct claims under the PB agreements, and --

THE COURT: But they're seeking to amend to assert them, they don't have direct claims under the filed documents, right?

MR. LEVINE: Well, as I understand it, they argue that those direct claims are embedded in here.

THE COURT: In here?

MR. LEVINE: Yes. They have suggested that if they're wrong about that, they'd like to amend, but they don't admit that they need to amend, as I understand their position.

THE COURT: Okay. Well, I can ask them about that.

MR. LEVINE: The -- I'm reading just now from paragraph -- from footnote 13 of their opposition, "As noted in footnote 3 of the estimation objection, Maverick's claims also asserted and reserve rights with respect to various other entitlements, such as interest, legal fees, and other damages, including damages for lost investment opportunities and other items."

Now, we agree that they (indiscernible) mention interest and fees, but we think it's completely inaccurate to say that the Maverick claims also asserted and reserved rights with respect to other entitlements including damages, including damages for investment opportunities and other items. We just don't think they're here.

So we think that to the extent they think they've already asserted them, that's just wrong, and that to the extent that they want to assert them, they have to move to amend the proof of claim, and of course we would argue it's much, much too late for that.

THE COURT: Could you address -- there seems to be an argument that somehow this is not capable of being resolved in a sufficiency hearing basis.

MR. LEVINE: Well, we think that's just wrong

because there are no disputes. If 562 applies, we think the -- well, we think that the fact -- our 562 argument relies entirely on legal disputes, that the facts underlying those arguments are not in dispute, that the settlement agreement with LBIE and Maverick was where all the prime brokerage documents were terminated, there was no prior termination.

They admit that they got the value of their assets, their cash and securities as of around that date. So those are the only factual issues, we're not disputing the money and I don't think they're disputing the termination.

All they're raising are legal arguments, 562 doesn't apply because the prime brokerage documents are not securities contracts and are not master netting agreements. And the guarantee is not a securities contract or master netting agreements, we think those are issues of law which Your Honor can resolve.

They argue that the prime brokerage documents were only terminated as to LBIE, not as to LBHI. Again, we think there's no dispute about the language of the settlement agreement, the question is what is the legal impact of the termination. Was there anything against LBHI that could have survived and if there was, wasn't -- didn't that mean that it was an executory contract which was rejected on the

date of the effectiveness of the plan.

So we think that clearly under the 562 argument, it clearly can be resolved because the facts that we rely on are not in dispute, or we're not disputing them at least for purposes of this hearing, and they're just legal issues.

There's also the question of netting. We think that -- or their right to diminution damages-- we think that clearly is another legal issue. The language of the prime brokerage documents and the exculpatory language, we think as a matter of law, as Your Honor has held in three different cases and consistent with MF Global precludes diminution damages.

So that we think Your Honor -- so even if Your Honor rejects the 562(a) argument, you certainly can rule as a matter of law that there are no diminution damages, which would then just leave a question of whether they're entitled to the 4.3 million net amount owed to them as of the petition date or some greater or lesser amount I guess.

But it seems to me, you know, let me -- because as you know, I have never gotten over show and tell, I can't leave without a handout, so I'd like to hand up one and counsel and approach the bench.

THE COURT: And then I'll ask you to wrap up.

MR. LEVINE: Okay.

THE COURT: This is just a demonstrative, right?

MR. LEVINE: This is just a demonstrative. These are numbers. So -- okay. So the top of this is supposed to be our summary of the proofs of claim.

THE COURT: Uh-huh.

MR. LEVINE: And as we see it, it's purely a guarantee claim in which they seek 187.3 million in the aggregate, but expressly, as we saw when we look at the sample proof of claim, expressly minus any amounts owed by Maverick back to LBIE, and they think fees and expenses which are unliquidated and interest which is unliquidated, and we don't think they're entitled to those either for the normal reasons, and then no other claims asserted.

Then in their current theory which comes from their objection to the estimation motion, and their response to our objection to their claim, there are guarantee claim components, in which they assert that not 187.3 million, but the value of their long positions, just their long positions without netting was 118.1 at the petition date, that they received 101.9 million in value as of the settlement date, and therefore, that difference is the 16.2 they're asking for we say that since you value it under 562 with the settlement date, there's nothing that's owed to them.

Fees and expenses and interest are still

unliquidated. In terms of the second page, there are other claims, they're now saying they have asserted, they want to amend to assert direct claims under the prime brokerage documents. Those do not seek any incremental damages, so as we understand it, it's still the 16.2 as opposed to the 187.3 on the proofs of claim.

Now, we obviously have various responses that are not asserted in the proofs of claim, LBHI did not assume any broker dealer obligations, and all the other defenses that apply to the guarantee claims apply.

And then they have consequential damages. And all we know about the consequential damages are what's in that footnote I read to you before, which simply says that they have consequential damages without offering any factual support, any -- well, let me read it to you.

In addition -- this is from the estimation motion objection footnote 3 --

THE COURT: Which is tab?

MR. LEVINE: Tab 4, I'm sorry. Tab 4, page 4.

THE COURT: Okay.

MR. LEVINE: Footnote 13, and they basically repeat this in their response to the objection motion they refer back to this paragraph. But this is basically all they said about --

THE COURT: Other damages.

MR. LEVINE: -- other damages, or lost investment opportunities is what they call it.

"In addition to the 16.2 million recoverable by Maverick, the Maverick entities proofs of claim also reserved the right to seek interest and legal fees and also generally asserted and preserved the right to pursue all amounts payable in connection with the prime brokerage agreements."

And actually what it says is "the prime brokerage documents," which is a full list of agreements, not just the PB agreements, and the guarantees. "Although Maverick believes the $16.2 still owed to it provides ample justification to deny the estimation motion with respect to the Maverick entitiesMaverick expects that it may in the future continue to pursue any rights it may have to collect interest, legal fees, or other damages, including damages for lost investment opportunities or other items."

And that footnote is basically repeated in their most recent objection, but lost investment opportunities, I mean, we know that, under New York law, it's virtually --

THE COURT: You don't have to spend time on this.

MR. LEVINE: Okay. The final thing is I got handed a note by Mr. Fail, let me just make a couple of

points that he asked me to make.

Another reason that Section 562 applies to the guarantee claims is that 562 talks about damages, it's not -- in their papers they kind of suggest 562 is a measure of a claim, how much a claim should be, but that's not right. 562 talks about damages. And then they say, well, New York law says you could calculate damages on the date of breach, and I agree with that.

But here we have a Bankruptcy Code provision, which under the supremacy clause controls, which says that if under 562, if 562 applies, damages are measured as of the termination date, rejection date, liquidation date.

And finally, we think that a fundamental problem with Maverick's approach under 562 is that it would suggest that where 562 applies to a primary obligor, it might not apply to a guarantor --

THE COURT: You have a two tiered system with two sets of books.

MR. LEVINE: -- two tier, you got it, Your Honor.

Then I'll sit down and let Your Honor -- thank you very much for your patience.

THE COURT: Sure.

MR. FAIL: Can I just correct? Sorry. One more thing and I won't correct Rick, Garrett Fail, Weil Gotshal

for the record. Your Honor asked the question before if we were aware of any claims against LBHI that had a primary obligor of LBIE that were allowed, I said I wasn't. I've since had a chance to check with my client, there was one claim that was allowed where the amount received by the counterparty was less than the claim allowed by LBIE or the claim asserted against LBHI due to certain unique circumstances of an agreement.

So we allowed one guarantee claim against LBHI, where we appropriately think the guarantee should be paid. In terms of the estimation motion, I said that there were largely two parties that were still disputing that. There are two additional claims, plus or minus a million dollars each that are also outstanding --

THE COURT: Okay.

MR. FAIL: -- that are disputing it. Other parties have claims outstanding with respect to estimation, but they won't be litigated if there's an agreement that those claims will be withdrawn on a date certain in the future.

THE COURT: Okay.

MR. FAIL: And in terms of claims that are being litigated, other LBIE related, we spoke about SRM, Newport and Providence you're aware of.

THE COURT: Yes.

MR. FAIL: And there's one additional claim that I'm aware of, Highland, which is in mediation, a $5 million claim, so I just wanted to be complete for the record.

THE COURT: All right.

MR. FAIL: All the unique circumstances.

THE COURT: It was just by way of background for me, it's neither here nor there in terms of legal arguments.

MR. FAIL: I agree, thank you.

MR. ROLL: Good morning, Your Honor.

THE COURT: How are you?

MR. ROLL: I'm fine, Your Honor, how are you?

THE COURT: Good.

MR. ROLL: William Roll of Shearman & Sterling appearing on behalf of the Maverick entities. I'm here with my colleague, Randall Martin.

Just a program note if I might, Your Honor --

THE COURT: Sure.

MR. ROLL: -- if it's all right with the Court, I was hoping to afford Mr. Martin the opportunity to argue at least some of this because he's --

THE COURT: Of course.

MR. ROLL: -- done 99 percent of the work, so he should have at least some of the fun.

THE COURT: Delighted.

MR. ROLL: My intention is if we get to things like the exculpatory provisions --

THE COURT: Sure.

MR. ROLL: -- and the proofs of claim, I'm going to turn that over to him.

THE COURT: Sure. I want to ask you a couple of questions, though --

MR. ROLL: Of course.

THE COURT: -- right off the bat.

So suppose there was no Lehman filing broadly speaking and life just went on.

MR. ROLL: Yes.

THE COURT: Right? And the Maverick entities decided to part ways with LBIE. And they terminated the prime brokerage agreement.

MR. ROLL: Uh-huh.

THE COURT: Give me back my stuff, we're going to go to another broker dealer.

MR. ROLL: Right.

THE COURT: Okay. And at that moment in time, the custody and securities were worth less than what they were when you gave them to LBIE.

MR. ROLL: Uh-huh.

THE COURT: Would you have a right to call in the guarantee for the diminution in value?

MR. ROLL: Well, there would be no diminution in value, as Your Honor has articulated that hypothetical, because we would be looking at just that one date.

THE COURT: I'm sorry, no, my hypothetical is that on the -- at the commencement of the relationship with the prime broker --

MR. ROLL: Right.

THE COURT: -- with LBHI as a guarantor --

MR. ROLL: Right.

THE COURT: -- you -- custodies, securities that were say a billion dollars --

MR. ROLL: Correct.

THE COURT: -- okay. And then you decide you're going to go with a different broker dealer, right, and you terminate. And you say to LBIE, give me back my stuff, right. And LBIE says, sure, here's your stuff. Okay. Or LBIE says, and you agree, well, we don't want back our stuff, we just want the value of our stuff. And the value of the stuff on that date is half a million dollars less, right. You get to go ask for that half a million dollars from your guarantor?

MR. ROLL: No.

THE COURT: Why not?

MR. ROLL: Because we would have -- well, Your Honor started with a very big if. No bankruptcy filing, so we're in a normal relationship, so we, Maverick, would be taking a risk in that circumstance of asking for its securities back --

THE COURT: Why is that --

MR. ROLL: -- at a time when the value would've diminished.

THE COURT: Why does that not apply in this situation?

MR. ROLL: Because of the application of 502 in the Bankruptcy Code, because of the fact that --

THE COURT: So you get more in bankruptcy than you would out of bankruptcy?

MR. ROLL: Because --

THE COURT: You get an enhanced claim against a bankrupt guarantor.

MR. ROLL: In these -- in the circumstances presented here --

THE COURT: That's pretty good stuff.

MR. ROLL: It's good stuff, but it's consistent with the law. And I think it's important to note that Your Honor's hypothetical, it's a fair question, but in that

circumstance, Maverick could have taken -- made the choice at any point along the way to say, give me my stuff back.

THE COURT: Right.

MR. ROLL: With the bankruptcy having intervened, we didn't have that choice. So in Your Honor's hypothetical we could have said, well, you know --

THE COURT: You realize what you just said. When the bankruptcy intervened, you didn't have that choice. So that's consistent with the application of the exculpation. It's the absence of choice that was --

MR. ROLL: In terms of the number, because -- that's all I was really getting at, Your Honor. Because when the bankruptcy intervened, when -- and let's, you know --

THE COURT: Go back to my hypothetical though, because a guarantee is a guarantee is a guarantee --

MR. ROLL: Correct.

THE COURT: -- according to you.

MR. ROLL: Right.

THE COURT: So when you -- you get a guarantee from LBHI parent --

MR. ROLL: Uh-huh.

THE COURT: -- and then you decide to terminate --

MR. ROLL: Right.

THE COURT: -- and your stuff is worth less, you have a guarantee. Well, I don't understand why out of bankruptcy you would not be able to then say, make good on the guarantee.

MR. ROLL: We have a guarantee for whatever the obligation is at that point.

THE COURT: At the point of the termination.

MR. ROLL: No, no. In this particular instance, there was no termination. The value of the guarantee derives from the claim we're able to assert under Section 502 of the Bankruptcy Code against LBIE on or LBHI and LBIE on the petition date --

THE COURT: But the claim was unliquidated on the petition date.

MR. ROLL: Understood. But New York law says, it's a New York law governed contract, New York law says the damages are measured from the date of the breach. The breach occurred on the date they went into administration, which is the same date that LBHI filed for Chapter 11.

So that's when things begin. And on that date, we have a claim against LBIE under New York law for the amount of the securities, i.e., you know, what they're holding because they breached the obligations to return those.

We have a claim under the guarantee, as of that

same date for that same amount, but we can't exercise it, we can't exercise the right under the guarantee because LBHI has filed.

So at that point and from that point, we have a claim for 118, at least 118, the value of the securities at that point and cash, which they don't dispute. Every day from that point, until we get to March of 2012, and under the LBHI theory today, everything changes at that point.

They say, well, the settlement agreement is entered into, it effectuates a payment in full to Maverick, the liability under all the agreements, including the guarantee, is extinguished and everybody goes home. But that's not quite right.

That doesn't take into account the -- two things, two sets of things. The first thing is the facts, what actually happened at that point, which is there was a -- LBIE's liability and the damages was actually compromised at that point, following a real live negotiation engaged in by real live people coming up with a real live agreement, which Mr. Levine quoted from, and I'm going to quote from too.

That said because of the positions taken in that negotiation and because of the application of UK insolvency law, all you're going to get, Maverick, at this point, is the value that UK insolvency law would say you get, which is

the value of the cash and securities at that point, the 101.9.

But it didn't change what was owed to us under the guarantee, the amount of the claim for which was fixed as of the petition date, unless there's some basis on which it can be set that got terminated, and this was a question Your Honor put to Mr. Levine at the very beginning of his argument, you know, which is -- if it's not terminated --

THE COURT: But you're assuming your conclusion. You're assuming that simply because there was an LBHI petition date --

MR. ROLL: Uh-huh.

THE COURT: -- and you can come up with a number --

MR. ROLL: Right.

THE COURT: -- a value of the securities on that petition date, that that's the amount you get to assert against LBHI on the guarantee. But that's not an argument, that's just ipse dixit, I mean --

MR. ROLL: Under 502, the amount of a claim is fixed as of petition.

THE COURT: But that assumes that 562(a) does not apply.

MR. ROLL: Well, 562(a) does not apply, and I can

go right into that if Your Honor would like. This may be the nub of it, you know, they say the agreement -- the guarantee was terminated for two sets of reasons --

THE COURT: Forget about whether it's terminated or not. Assume it's not terminated.

MR. ROLL: If the guarantee -- if it is not terminated and if the guarantee was not terminated and 562 does not apply, there should be absolutely no dispute that we're entitled to what Section 502 would say we can assert against the guarantor, which is the value as of the petition date. Their entire argument on sufficiency rests on the notion that we were somehow paid in full, which relates to the very "facty" set of issues surrounding the numbers, and I was going to get to --

THE COURT: What do you mean "facty" issues surrounding the numbers? There's no facts surrounding the numbers. You say you should be able to assert a claim on the guarantee for the 118 so essentially you can get distributions from LBHI that would catch you up and give you full recovery on the 118 as opposed to the 101, that you've already gotten.

MR. ROLL: I was referring to the back and forth between the parties in the negotiations, the evidence of which is not at all before the Court at this stage, that

resulted in the number of 101.9 at the time we did the settlement with LBIE, that's what I was referring to.

But the second part of their, you know, you-were-paid-in-full argument is that the guarantee was terminated, and therefore 562 kicks in and that's how you measure the damages. But let's think about that. 562 requires at least three things, a specific party, a specific kind of an agreement, and a specific action being undertaken on behalf -- by that party with respect to that agreement.

We're not going to fight about, you know, the specific party here, you know, whether it's a securities contract or whatever, but we do take issue with the notion that the guarantee was actually terminated in connection with the settlement, because it clearly was not.

The settlement agreement itself says, quite clearly that it's terminating the relationship between LBIE and Maverick and not anybody else, and it specifically reserves to Maverick the right to pursue claims against any other Lehman entity.

THE COURT: Sure, but you know, this is where you go into your, you know, your Ivanhoe argument which you think is a show stopper. But the fact of the matter is that all of that only stands for the proposition that had claims against LBIE, claims -- if LBIE had not been a 100 percent

payor, you would unquestionably be able to assert the full amount of that claim against LBHI so that you could become paid in full, but you got paid in full by LBIE on the 101.

MR. ROLL: We got paid 101, but that was not -- that was clearly not payment in full in the eyes of the Maverick people.

THE COURT: So let me ask you a different question. Let's take a little walk around the Bankruptcy Code.

MR. ROLL: Okay.

THE COURT: 502(b)(6).

MR. ROLL: 502(b)(6), okay.

THE COURT: All right. The cap on lease rejection damages.

MR. ROLL: Okay.

THE COURT: See, he is smarter than you, he knows exactly what it is.

MR. MARTIN: We were going to bring up this example, Your Honor.

THE COURT: Okay. All right. So 502(b)(6) says if, you know, if you reject a lease, your damages are capped pursuant to 502(b)(6).

MR. ROLL: Right.

THE COURT: Right. And the landlord might say,

well, that's really nice, tenant debtor, but I've got this nice guarantee. Okay. So I would think that you would tell me, see, that's just like this, we've got this guarantee so that the allowance of the lesser amount pursuant to the Bankruptcy Code doesn't mean that I don't get to assert the full amount of my damages against my guarantor, right?

MR. ROLL: Correct.

THE COURT: Okay. However, under the Bankruptcy Code if your guarantor is a debtor it doesn't work that way, the cap applies.

So this notion that there's some greater ability to recover under applicable -- I put in air quotes, although air quotes have been much maligned nowadays -- applicable non-bankruptcy law, you know, doesn't necessarily fly. And here I draw an analogy to the way 562(a) works both as a matter of policy and actually by its terms --

MR. ROLL: Uh-huh.

THE COURT: -- to rebut the concept that, you know, a guarantee, is a guarantee, is a guarantee, and you get more than your -- the obligation owed to you by your primary obligor, which is in fact what you're seeking.

MR. ROLL: Right.

THE COURT: You're seeking more than what your primary obligor owed you.

MR. ROLL: Because of the operation of UK insolvency rules we get the value of the securities on that date. And there is law from the southern district, cited in our papers, which they don't deal with, unless I missed it, and I don't think I did, the Instituto (ph) case on page 14 of our --

THE COURT: Uh-huh.

MR. ROLL: -- objection, which basically says that the discharge -- a guarantor's obligations on the guarantee are not discharged by reason of discharge of the primary obligor's obligations as a result of foreign bankruptcy law. That's still good law from the district court here, and they don't address it at.

So as a result of that that discharge at the level of 101.9 as a result of the negotiations we had with them over what counted and what didn't to get to the final number, means that we still retain the full amount of the claim against the guarantor, you know, regardless of what happens in connection with the foreign bankruptcy proceeding.

So you still have that, and if you combine that with Ivanhoe that means we can still recover -- we can still assert the full amount of the claim against the co-obligor/guarantor up to the point of payment in full,

payment in full being defined by New York law in this circumstance, because damages are measured as of the date of the breach, against the guarantor.

So -- and I sense that Your Honor apprehends that this is the argument, because this is where the Court started with Mr. Levine, so I know that I'm not saying anything that Your Honor doesn't already know that we're going to say, but that really is the nub of the argument.

What I would say with respect to the hypothetical scenarios and the 506(b), you know, I'm not smart enough to parse 506(b) on the fly, maybe Mr. Martin can do it, he can --

THE COURT: 502(b)(6).

MR. ROLL: 502(b)(6), I'm sorry -- you know, maybe he can do it and fix whatever I've left unfixed at that point, but respectfully we're not dealing with a hypothetical circumstance.

THE COURT: But we're not -- but we're also not dealing with New York law, we're dealing with the Bankruptcy Code and we're dealing with the operation of 562(a) --

MR. ROLL: Right.

THE COURT: -- under the Bankruptcy Code two securities contracts.

MR. ROLL: But -- right.

THE COURT: Which is -- the prime brokerage agreement certainly is, and which the guarantee certainly is.

MR. ROLL: Well we'll assume that for the purposes of this argument, but that's only two -- that's two-thirds -- or that's one-third, and I'll concede the other third --

THE COURT: Why isn't --

MR. ROLL: Because it was not terminated. It was not terminated in connection with the settlement, period, full stop, because of what the parties did and because of what the documents provide.

THE COURT: Well but there's terminate and there's terminated, right? To the extent that the underlying relationship terminates, right, let's go back to my 502(b)(6) example --

MR. ROLL: Uh-huh.

THE COURT: -- to the extent that the underlying relationship terminates I'm not exactly sure what the termination of a guarantee means. There are no ongoing -- there's no ongoing relationship between the primary obligor and the primary obligee, but the obligation of the guarantor to pay it is what it is as of that moment in time.

MR. ROLL: But the guarantee itself tells us what it means for the guarantee to not exist -- for the

obligations under the guarantee to not exist. And we should look at that. There's only one instance in which the guarantee itself -- and this is the one that's toward the back of the book, I forget which tab it is -- but it's the one that the parties have referred to as the LBHI guarantee.

THE COURT: Uh-huh.

MR. ROLL: 4(c).

THE COURT: Uh-huh.

MR. ROLL: If Your Honor would look at the --

THE COURT: But you have to deal with the language that says that -- the termination language that says that all obligations --

MR. ROLL: Uh-huh.

THE COURT: -- are terminated.

MR. ROLL: You're talking about the language in the settlement agreement.

THE COURT: Yeah.

MR. ROLL: All obligations of LBIE.

THE COURT: No, but that's not exactly right.

Let me -- you show me what you wanted to show me.

MR. ROLL: I'll show -- well let's go to the -- let's talk about the settlement agreement first --

THE COURT: Sure.

MR. ROLL: -- because we're on it, and then we'll

go back to the guarantee.

THE COURT: What's -- give me the tab, please.

MR. MARTIN: 4(e).

MR. ROLL: 4(e) for the settlement agreement.

THE COURT: 4(e). Okay.

MR. ROLL: If Your Honor would look at paragraph 2.1(a), I think this is one of those that Mr. Levine may have actually pointed Your Honor to.

THE COURT: Yep.

MR. ROLL: But it says the relevant agreements and all transactions thereunder --

THE COURT: Uh-huh.

MR. ROLL: -- are terminated as between LBIE and each Maverick entity. It doesn't say anything about LBHI, it doesn't say anything about the --

THE COURT: No, I'm thinking of --

MR. ROLL: -- guarantee.

THE COURT: -- a different provision. I'll have to find it.

MR. ROLL: Okay. But this one doesn't go away, I mean this one is here.

The second part of that, subsection (b) says that this deed shall be a full and final settlement of all rights, obligations, liabilities, and claims, et cetera, et

cetera, which LBIE and each Maverick entity may have against one another, including, but not limited to, and it goes on from there. And it doesn't say anything about LBHI.

THE COURT: Well --

MR. ROLL: And they knew about LBHI at the time and they knew about the guarantee.

You can then look at paragraph 2.3, which is the release language, the releases, which are actually once litigated you can say that's the most operative part of any settlement agreement most important, and the one where it's most important to be clear provides that it's only the Maverick entities and LBIE that are releasing each other with respect to all claims.

Again, the parties knew about LBHI and the guarantee.

THE COURT: But the guarantee says that the guarantee will remain in full force and effect until the first to occur of --

MR. ROLL: Right.

THE COURT: -- the obligations defined term, no longer in existence, and the prime brokerage guarantee defines obligations as all obligations under the agreements, a defined term, and the defined term agreements includes the prime brokerage agreements, the GMSLAs, and the letter

agreement, and the MLAs. So --

MR. ROLL: But the obligations no longer being in existence is not a termination under this language. Termination is -- this is the point I was trying to get to before. Termination is effectuated by notice. Obligations no longer being in existence means, has to be based on the other language in this document, paid in full, and that has to mean --

THE COURT: You're ignoring the language --

MR. ROLL: -- under New York law.

THE COURT: -- that says the guarantee will remain in full force and effect.

MR. ROLL: Right. Until the first --

THE COURT: Until the obligations are no longer in existence.

MR. ROLL: But the obligations are in fact in existence. The obligations are still in existence because we have not been paid in full --

THE COURT: Can you hold on one second?

MR. ROLL: Certainly.

THE COURT: Hold on one second.

(Pause)

THE COURT: Okay. Go ahead, Mr. Roll, sorry.

MR. ROLL: I would just contend, Your Honor, that

that -- you know, termination is the trigger for 562. My point is that the obligations no longer being in existence is not a termination point, it has to do with actual payment in full.

And the reason I say that is, that position is consistent with the rest of the language in the agreement, which actually indicates that there are certain circumstances in which the obligations still remain. In fact the very next sentence. Termination of this guarantee shall not affect the guarantor's liability hereunder as to the obligations incurred or arising out of transactions entered into it prior to the termination thereof.

So obligations still being in existence is separate and apart from termination. It's a separate concept.

THE COURT: Okay.

MR. ROLL: And there's actually another provision in here that says the obligations can spring back to life if they -- even if they've been paid in full and a bankruptcy proceeding allows them to be avoided -- payments to Maverick to be avoided.

So termination and obligations being paid in full are two different concepts in this guarantee, and I think it was carefully drafted for that reason, and -- or to

establish that or to leave to be a readily ascertainable inference to draw from the document.

And it must mean, I think any way, and we've made this point in the papers, that paid in full doesn't relate to terminating the obligations of LBIE as a result of the operation of UK insolvency law and the settlement and whatever was done there and whatever was left open or not, but rather New York law, which says the damages are measured as of the petition date, which is the date of the breach.

THE COURT: Okay. Do you want to -- we should turn to anything you want to say about exculpation and we should turn to anything you want to say about direct claims and/or amendments.

MR. ROLL: Yeah, on that, Your Honor, I'll turn it over to Mr. Martin who will cover exculpation.

THE COURT: Okay.

MR. ROLL: Probably the other items as well, but if not I can come back on this.

THE COURT: Okay.

MR. ROLL: Thank you, Your Honor.

MR. MARTIN: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARTIN: Thank you for indulging our --

THE COURT: No problem.

MR. MARTIN: -- tag team presentation.

THE COURT: Always like it when the younger person teaches the older person a thing or two.

MR. MARTIN: I don't think that's going to happen today, but --

MR. ROLL: I actually appreciate it too, Your Honor.

MR. MARTIN: Could I touch on briefly the example in the question that you opened with to Mr. Roll?

THE COURT: Sure.

MR. MARTIN: Because I think that you're creating a hypothetical that can't and won't happen in the real world,and it is not the case that we are asserting a claim for one penny more than we are entitled to outside of bankruptcy.

You raised the hypothetical in which we went --

THE COURT: Hold on one second.

(Pause)

THE COURT: Go ahead.

MR. MARTIN: You proposed a hypothetical in which we wanted to terminate our relationship with the Lehman entities outside of bankruptcy.

THE COURT: Uh-huh

MR. MARTIN: Every day outside of bankruptcy that

we have a long position open, we're betting on Apple stock, for instance, we are assuming the risk that Apple stock goes up or down.

THE COURT: Yes.

MR. MARTIN: So it's in custody with them, but every day we have it with them --

THE COURT: You do have that risk, right.

MR. MARTIN: And so if we tell them we want to terminate the relationship, please give us our securities back or the monetary equivalent --

THE COURT: Uh-huh.

MR. MARTIN: -- they have to give it back to us.

THE COURT: Uh-huh.

MR. MARTIN: If they take two years to execute that instruction and during that two years after which we've told them we don't want to be invested in Apple stock --

THE COURT: Uh-huh.

MR. MARTIN: -- we get the Apple stock back and its declined in value --

THE COURT: Right. That's --

MR. MARTIN: -- in that case, yes, the guarantee kicks in.

THE COURT: That's a fair clarification.

But here this goes right -- this takes us right to

exculpation. Here LBIE filed.

MR. MARTIN: It filed, that's right.

THE COURT: And that's what caused the delay.

MR. MARTIN: I don't think that our claim was caused by a bankruptcy. Our claim is based on the fact --

THE COURT: Why didn't you get your securities back sooner? You didn't get your securities back sooner because there was a bankruptcy.

MR. MARTIN: But surely that's not what the force majeure clause was intended to capture and pick up.

THE COURT: You don't think?

MR. MARTIN: It talks about tornados, it talks about insurrections, it does not reference --

THE COURT: It does not reference --

MR. MARTIN: -- bankruptcy.

THE COURT: -- specifically -- well Judge Glenn in MF Global certainly thought that suspension of trading by SIPA with respect to LBI was pretty much of a financial tornado.

MR. MARTIN: Respectfully we think he's wrong. It's a term of art in the financial world. On suspension of trading I think we have a half page footnote --

THE COURT: Okay.

MR. MARTIN: -- citing what a suspension of

trading means.

Critically I also think that the MF Global language and exculpation clause also included a reference to all laws. This one does not. So there is an important distinction between the language that was at issue in that case and our language.

And the other thing, Your Honor, that makes it I think crystal clear to me, that the guarantee could not have been eviscerated by a force majeure clause, is that the guarantee itself says as much.

I'm at the third paragraph of paragraph -- of tab C --

THE COURT: Okay.

MR. MARTIN: -- behind tab 4 --

THE COURT: Okay.

MR. MARTIN: -- and there's a provision in the guarantee that expressly notes that the obligations under the guarantee kick in if we are the subject of a claw-back resulting from a preference.

THE COURT: Where are you?

MR. MARTIN: It's the third full paragraph down, Your Honor. It's about two-thirds of the way down.

THE COURT: This guarantee is?

MR. MARTIN: Correct. And if you read that whole

paragraph what you'll see is that it expressly and unambiguously contemplates that they will have to pay us under the guarantee if we are the subject of a claw-back with respect to a preference or a fraudulent conveyance.

THE COURT: Okay.

MR. MARTIN: That can mean one thing only.

Now, I know we're not making a claim based on a preference and I know we're not making a claim based on a fraudulent conveyance, but what this unambiguously means is that if as a consequence of a bankruptcy we don't get paid in full this guarantee is triggered. The parties said as much.

And what else is a guarantee for?

THE COURT: It doesn't say that, let alone unambiguously say that, but it's interesting.

MR. MARTIN: A preference would be consequence of a bankruptcy.

THE COURT: I'm going to decline your invitation to go down that path, because that's not what this says. It's --

MR. MARTIN: Your Honor, we had some points to make on netting as well if you'd like to hear those. I don't know if those are the --

THE COURT: I actually would not. I think I'm

okay on netting.

The only other thing that I'm interested in hearing is about this concept that there's either an embedded direct claim in the claims that were filed or that the Maverick entities ought to be allowed to amend to assert a direct claim, which seems to include some notion of lost investment opportunities. Is that on you or Mr. Roll?

MR. MARTIN: I can handle it, Your Honor.

: That's perfectly fine. Counsel is being generous to us and preserving our right.

We're not taking the position that there is a direct claim embedded in the proof of claim.

THE COURT: Okay. Because I didn't see.

MR. MARTIN: And it's not there.

THE COURT: Okay.

MR. MARTIN: However, and this is critical, and this speaks importantly to a point that you were discussing with Mr. Roll. An absolute and unconditional guarantee of payment is a standalone document under New York law and a standalone series of obligations.

So our point on the direct claim is that it is so similar to the claim asserted with respect to the guarantee claim that we should be permitted an opportunity to amend, if necessary, although that only comes into play if you

disagree with Mr. Roll that 562 doesn't apply because the guarantee wasn't terminated. We don't need the direct claim otherwise so there's no need for you to resolve that unless you go against us on 562.

THE COURT: But here's the part I don't understand. If you think you have a claim for the delta between 101- and 118- --

MR. MARTIN: Uh-huh.

THE COURT: -- which you do.

MR. MARTIN: Correct.

THE COURT: Okay? Then you think you have a claim for lost investment opportunities, because I assume that the theory of the claim is that if we had had that $5 million for that period of time we would have invested in all this great stuff and we would have made all this money.

So the notion that you have that claim but you didn't assert it, it just doesn't make any sense.

MR. MARTIN: You're switching I think from the direct claim to the consequential damages claim, and those are two different things in my mind. And I do think, Your Honor, the proof of claim did adequately address our theory of consequential damages.

THE COURT: You think a guarantee claim includes a claim for loss investment opportunities?

MR. MARTIN: I think our proof of claim --

THE COURT: Really?

MR. MARTIN: -- adequately stated -- yes, Your Honor.

THE COURT: Where does it say that?

MR. MARTIN: Under tab 5, page 2, the first -- sorry -- the last sentence, it's about halfway down on page 2 in Roman I.

THE COURT: Uh-huh.

MR. MARTIN: This is a very broad and very general statement, Your Honor. We said, "this proof of claim constitutes a demand for payment under the guarantee". That refers to a payment of any amount owed as a result of the breach of the guarantee which occurred under New York State law as of the petition date.

THE COURT: So you can say to me today that statement means that we have a claim for lost investment opportunities for $50 million? Surprise LBHI, how's your reserve looking? I mean that's --

MR. MARTIN: There should be --

THE COURT: -- it doesn't work that way. Okay? It doesn't work that way.

MR. MARTIN: Are there any other points that Your Honor would like to hear addressed?

THE COURT: All right.

MR. MARTIN: Thank you, Your Honor.

THE COURT: Thank you. Clean up, anyone?

MR. LEVINE: Yeah, Your Honor, I'd appreciate -- I can be very quick.

THE COURT: I'm going to hold you to that.

MR. LEVINE: Fair enough. You've been very generous with your time.

Okay. So the first thing, I just wanted to enforce a few things that Your Honor questioned counsel about. In terms of the exculpation provision and what happened after LBIE filed for administration, on page 8 of their response --

THE COURT: And counsel cited a district court case that says it's dispositive in their favor of that argument that --

MR. LEVINE: Well what I was going to point you to, Your Honor --

THE COURT: Yeah.

MR. LEVINE: -- was their own statement. I'm reading from their brief, and you know, that in opposition to the current objection, the one they filed.

LBIE -- under the -- this is tab 2, page 8, if you want to read along, paragraph 22. "The Maverick claims are

straightforward. Under the prime brokerage agreements and the New York Uniform Commercial Code, LBIE was obligated to return all custodied, cash and securities to the Maverick entities upon request. LBIE, however, was not in the position to do so after having commenced its administration proceedings".

To me that necessarily would require rulings, that is, under clause 28 of the PB agreement, "You'll agree that Lehman Brothers will be liable for any loss caused, directly or indirectly, by government restrictions, exchange or market rulings" -- that doesn't really apply - "suspension of trading..." They couldn't perform. They admit the reason they have a loss is because once LBIE filed for administration, it wasn't able to trade, it wasn't able to perform. To me that's clearly covered.

In terms of the lost opportunities, the last sentence of paragraph 29 of the PB agreement says, "in no event will Lehman Brothers be liable for any special, indirect, incidental or consequential damages." Lost investment opportunities are quintessential consequential damages. Consequential damages you almost never get unless you have a specific instrument you can point to.

In terms of the guarantee. Your Honor, I think, was completely on point when you were directing counsel to

the last paragraph on the first page of the guarantee. "This guarantee will remain in full force and effect until" - "until" means something -- "the first to occur of…the obligations are no longer in existence."

As you pointed out, the obligations refer back to LBIE's obligations as a guarantee. It's not direct obligations, it's guaranteed obligations. LBIE's obligations were completely released and extinguished by the settlement.

And in terms of the distinction, which I don't really understand, between termination and ending of the guarantee, the next sentence says, "termination of this guarantee shall not affect." Clearly, it understood the prior sentence to relate to a termination of the guarantee.

As you know that, you know, we don't think it matters for 562 whether the guarantee was terminated, even though we think it was, because it governs damages in relation to securities contracts, master nettings agreements, the damages at issue are those that are running under the prime brokerage documents which I think is clearly under the very, very broad language of the second circuit in --

THE COURT: Madoff.

MR. LEVINE: -- Picard versus Ida Fishman,

including they specifically call out were it not for the account documents -- I'm reading from the second circuit decision - "were it not for the account documents there would be no basis for a customer to make deposits or request withdrawals."

Their attempt to distinguish the PB agreement from the definition of a securities contract, because what they want was to get their securities back and not buy or sell trades, is specifically described by the second circuit as something that made the account agreements there a securities contract.

And finally, Your Honor, I mean just to be kind of crude, they paid $30 million. They paid $30 million to LBIE.

You know, you can't have an obligation to the primary obligor and think you have a guarantee claim, it just doesn't make sense.

THE COURT: Okay.

MR. LEVINE: Thank you.

THE COURT: All right. So, last licks, Mr. Roll?

MR. ROLL: Please, Your Honor.

THE COURT: Sure.

MR. ROLL: And I promise, I will be quicker than Mr. Levine. And I appreciate the time --

THE COURT: Sure.

MR. ROLL: -- I appreciate everyone's patience.

The last point we paid $30 million, we would have paid a lot less if we had gotten full credit for the securities cash that they had that they owed us, so that's a red herring.

THE COURT: What do you mean if you had gotten full credit --

MR. ROLL: If we had gotten everything that we thought we were entitled to under -- from LBIE, if all the positions had been closed out as we requested and the resisted in the course of the negotiations we would have ended up paying less.

So it's -- it doesn't mean that we weren't entitled to --

THE COURT: Okay. Well I don't want -- I'm not --

MR. ROLL: But --

THE COURT: I really am trying to resist anyone luring me away -- into contested facts, so.

MR. ROLL: Well I was going to stop at that point. The bottom line on that is, it is part of a set of contested facts which is inappropriate at a sufficiency hearing, and they know full well that there was a lot more to the story of what went on in those negotiations and what's in the

papers, because --

THE COURT: Okay. But you're doing precisely what I said I'm not -- I don't believe that there's a need to go beyond the undisputed facts --

MR. ROLL: Okay.

THE COURT: -- of using the 101- and comparing it to the 118- that is now being sought.

MR. ROLL: Then I'll close on this point, Your Honor.

With respect to the termination of the guarantee as a matter of fact it was not terminated, absolutely --

THE COURT: What about the plan provision? What about the argument that once you get to the plan it's over, it's rejected?

MR. ROLL: As an executory contract?

THE COURT: Yeah.

MR. ROLL: I think it fails the Countryman test, there were no remaining obligations on the part of Maverick, so I don't think it actually qualifies as an executory contract. And we saw that for the first time in their reply brief, you know, that's my kneejerk reaction to that. It's the first we had heard of that. But again, I don't think it meets the test for an executory contract.

This is the point I wanted to close on. The

guarantee was not terminated as a matter of fact or law or else there would have been no reason for the existence in the settlement agreement of the provision that preserved for us the right to proceed against other Lehman entities. That can only mean that we had the right to proceed on other obligations held by other Lehman entities, including LBHI, including the guarantee.

And on the proof of claim issue, you know, LBHI is really claiming they're surprised by the consequential damages point which we have been discussing with them for quite some time and they know it --

THE COURT: It's not a question of what you've been discussing with them, it's a question of what the proof of claim says, so.

MR. ROLL: And if they believe it's not fairly set forth, if the Court believes it's not fairly set forth we would respectfully ask for the opportunity to move to amend to make that claim, because we believe sincerely it's been clear to them all along, and if need be to make it clearer we'll do it in writing.

THE COURT: Okay.

MR. ROLL: Thank you, Your Honor.

THE COURT: Thank you.

So you can probably tell that I spent a lot of

time on this before today, but I very much wanted to hear from you, because the issues are many, and here's the thing, you're entitled to, and I think this probably merits a full-blown written opinion. When that would occur, just look around. Starting trial in another Lehman matter on April 3rd, 150 million at issue. As soon as that's over, starting trial on another Lehman matter in which the amount at issue is $2 billion. That promises to take me into 2018, and that's just Lehman. I have a full docket otherwise. So I don't want to deprive you of what you're entitled to, but I'd also like to help you progress beyond today.

So I'm going to give you my bullet points, what my ruling -- what the decision will look like. Beyond that, I can't give you a date when I would issue a formal memorandum opinion, but perhaps this could provide the bases for you to have further discussions and figure out whether you want to wait, you know, exercise appeal rights, etcetera, et cetera.

If there were 48 hours in the day or if there were two of me I could move more quickly, but it just -- it is what it is. So it was a good happenstance that I was able to even fit you in today for this hearing.

So the bottom line is that the Maverick claims should be disallowed and expunged. The claims have been satisfied in full by LBIE. Although claims are typically

valued under the Code as of the petition date, here Section 562(a) is applicable and provides an alternative date for valuing claims that arise from the rejection, liquidation, termination, or acceleration of certain specified contracts, including "master netting agreements," in quotes, and "securities contracts," in quotes.

So the prime brokerage agreements are securities contracts and master netting agreements within the meaning of Section 562(a).

Maverick's arguments that its claims are not based on the securities contract aspects of the prime brokerage documents and thus are not subject to 562 fails because the argument is contrary not only to the courts' expansive reading of the term "securities contracts," and more specifically the second circuit's holding in the Madoff case finding that brokerage account agreements similar to those here are in fact securities contracts, and that's explored in some detail at pages 5 to 7 of Lehman's reply;Maverick's severability argument, as I'll call it, ignores the fact that the prime brokerage guarantee is a separate securities agreement under the Code, and regardless of whether certain obligations arising under the prime brokerage agreements are severable, which I don't believe that they are, Section 562(a) applies here because the claims are based upon a

guarantee which qualifies as "a security agreement or other arrangement or other credit enhancement related to a securities contract or a master netting agreement." And once again, thedefinitions of these important terms are spelled out in Lehman's reply on page 7.

So the operative date for valuing the claims under 562(a) is the settlement date, which is March 30, 2012, the date of the Maveric-LBIE settlement.

Each of the prime brokerage agreements, including the guarantee, terminated on the settlement date. Pursuant to the terms of the settlement agreement all quote/unquote obligations under the prime brokerage documents were -- to use the words of that agreement -- no longer in existence from and after the settlement date. Therefore, Maverick's reliance on the petition date for the valuation of its claims is simply not correct. The prime brokerage agreements were terminated in all respects, functionally, not only as to LBIE.

Moreover, 562(a) would apply even if the guarantee had not been terminated, because nothing in 562(a) requires that a guarantee be terminated for such section to apply. 562 governs the measurement of "damages," quote/unquote, in connection with, among other things, the termination of securities contracts and master netting agreements.

As Lehman correctly points out, Maverick's reading of Section 562(a) would limit its applicability and in effect create a two-tier system of measuring damages.

First, primary claims in accordance with Section 562(a) as of the date of contract rejection, termination, acceleration, or liquidation; and two, related guarantee claims measured as of a different date.

I believe that this is incompatible with the policy behind such guarantees, which are given in essence to assure that the liability of the principal obligator, the primary obligor, is satisfied, which is what occurred here.

Value of the Maverick guarantee claims are covered by Section 562(a), they were valued at one hundred and one point nine million dollars as of the settlement date, which was the date that Maverick was made whole by LBIE.

Maverick cites Ivanhoe, but Ivanhoe and its progeny merely stand for the proposition that a creditor cannot recover more than the value of its claims or damages, and Ivanhoe does not enable Maverick to assert additional guarantee claim rights against LBHI.

Accordingly, I believe that Maverick cannot establish a guarantee claim against LBHI because it cannot establish any unsatisfied obligations of its primary obligor, LBIE.

Maverick recovered the full value of its long positions as of the settlement date. It would be contrary to commercial practice and commercial reality for a brokerage customer to be able to recover more from its primary obligor and guarantor in bankruptcy than it would outside of bankruptcy where a customer's economic exposure is measured on a net basis with the value of its long positions offset against its short positions.

In addition, for reasons that I will elaborate further in a more complete written opinion, I do believe that Judge Glenn was correct in MF Global, I do believe that under the principles that he articulated and the terms of the documents here that the exculpation provisions would themselves preclude the allowance of, in essence, what is the diminution claim being asserted by the Maverick entities.

Finally, I do not believe that Maverick should be allowed to amend its claims in any respects. Maverick filed guarantee claims, they are clear on its face and I don't believe that they have -- that it would be appropriate to allow them the opportunity to expand upon the theories of liability or the amount or nature of damages which had been asserted in the guarantee claims.

So that's kind of the short form of what I would

write. I suppose I could give you the option of entering an order and attaching the transcript, or just ask you to wait, or a third option behind door number 3 would be to continue to talk to one another and see if you can come to a consensual resolution.

So it's not that I don't believe that this -- every claimant's claim is very important, but I just have a reality of what I'm dealing with in terms of when I'd be able to turn something out that I would be willing to sign as a memorandum opinion.

MR. ROLL: We understand that, Your Honor. I -- respectfully I think we would choose a combination of one and three, three being we'll continue to talk, and one being not waiting. I mean we understand Your Honor is busy. If Your Honor is inclined or is willing to enter an order with the transcript attached that allows the right to -- affords us the right and the opportunity to take this to the next level we would appreciate that.

THE COURT: Well I think fairness you'd have -- I'd want you to discuss that.

MR. ROLL: Okay.

THE COURT: Because I really don't want to be in the position of depriving anyone of due process in any respect and what they're entitled to, and I don't like -- I

don't want anyone to feel that I'm giving them short shrift.

MR. ROLL: I understand that, Your Honor. We're sort of -- I'm trying to balance --

THE COURT: Yeah, me too.

MR. ROLL: -- the need to get moving on it --

THE COURT: Me too.

MR. ROLL: -- and again, I don't want to burden the Court. So we will continue to talk and if we may, would the Court permit us to get back to Your Honor --

THE COURT: Sure.

MR. ROLL: -- with how to proceed?

THE COURT: Absolutely.

MR. ROLL: I will say this though, I've seen in other instances how capable the Court is in terms of turning things out quickly and fully under tough circumstances, so.

THE COURT: Well but just to be clear, because you know, among us who, you know, practice in this building a lot people who know what 502(b)(6) is --

MR. ROLL: You will never let me forget that.

THE COURT: -- do not -- you're not -- no, you're not allowed to give him a hard time when you go back to the office.

MR. ROLL: I'll give him a very good time, because he did well.

THE COURT: Good. I do turn out things very quickly, very voluminous things, but often those are instances in which I have a real live living, breathing, struggling to breath debtor --

MR. ROLL: Understood.

THE COURT: -- and that makes for greater urgency. So I'm trying to not dig myself deeper here, but --

MR. ROLL: That's fine, Your Honor. We're happy to accommodate that, we'll talk to our friends on the other side and we'll see what we can do.

THE COURT: Okay.

MR. ROLL: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

(A chorus of thank you)

THE COURT: Just together just email chambers and just let us know which path you have elected to take, and you need not call out the party who's dissenting.

(Laughter)

THE COURT: Okay? If there's a dissent. If there's agreement, great. If there's a dissent just say, you know, we're going to wait or whatever it is we're going to do.

MR. ROLL: Very well, Your Honor.

THE COURT: All right.

(A chorus of thank you)

THE COURT: Thanks a lot. Have a great weekend.

(Whereupon these proceedings were concluded at 11:36 AM)

* * * * *

I N D E X

RULINGS

C E R T I F I C A T I O N

We, Sheila Orms and Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

_____

Sheila Orms

Certified Electronic Transcriber

_____

Dawn South

AAERT Certified Electronic Transcriber CET**D-408

Date: March 27, 2017

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